Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Implementation of the Pay Telephone Reclassifications and Compensation Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-128
RBOC/GTE/SNET Payphone Coalition Petition for Clarification Regarding Carrier Responsibility for Payphone Compensation Payment	)	NSD File No. L-99-34

REPLY COMMENTS OF
THE INTERNATIONAL TELECARD ASSOCIATION

The International Telecard Association ("ITA"), by its attorneys, submits these reply comments opposing the petition for "clarification" filed by the RBOC/GTE/SNET Payphone Coalition ("RBOC Coalition") in this docket.[1] Together with the overwhelming majority of commenters,[2] ITA urges the Commission to reject the RBOC Coalition's proposal to change long-standing and hard-fought payphone service provider ("PSP") compensation rules. Neither the RBOC Coalition nor its sole supporter, the American Public Communications Council ("APCC"), has presented any valid basis for such an unprecedented Commission action.

DISCUSSION

The RBOC Coalition's latest proposal presents a procedurally and substantively flawed scenario that harkens back to the Commission's initial PSP compensation rulemaking. In the

[1] ITA members Ameritech, Bell Atlantic and GTE do not join these comments.

[2] Telecommunications Resellers Association ("TRA"), Cable and Wireless, Frontier Communications, MCI WorldCom, Qwest and Sprint all oppose the RBOC Coalition Petition.

face of massive opposition, the Commission in 1996 adopted the "carrier-pays" compensation methodology on ground — incorrectly — that "TOCSIA bar[s] the Commission from imposing a coin-deposit compensation system for access code calls."[3] In February 1999, on remand from a second Court of Appeals reversal,[4] the Commission rejected pleas from 19 of 21 commenters to reconsider this model, concluding in a sparse three paragraphs that it would "monitor the advancement of call blocking technology and any marketplace developments before reconsidering a caller-pays approach."[5] Now, nearly three years after adopting its initial payphone compensation rules, the Commission is being asked once again to amend these rules on the narrow basis of only two parties' business interests and against the plain weight of the record.

As a procedural matter, the RBOC Coalition request for clarification is a reconsideration petition in sheep's clothing.[6] Changing the rules to impose compensation obligations on Carrier Identification Code ("CIC") assignees instead of facilities-based carriers constitutes a major amendment, not a clarification. Indeed, as Sprint argues, "[b]y no stretch of the imagination can the Commission's Order on Reconsideration be 'clarified' to mean what the RBOCs propose:

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[3] At least nine commenters opposed the Commission's approach in the first payphone compensation rulemaking. *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd. 20,541, 20,583 (1996)("*Payphone Order*"). "TOCSIA," the Telephone Operator Consumer Services Improvement Act, of 1990, 47 U.S.C. § 226, bars the assessment of charges by carriers for "800" toll-free services, but not aggregator-imposed per-call fees (such as by hotels) for the use of their CPE for 10XXX, 800 and other "dial-around" calls.

[4] *MCI Telecommunications Corp. v. FCC,* 143 F.3d 606 (D.C. Cir. 1998); *see Illinois Public Telecommunications Ass'n v. FCC,* 117 F.3d 555, *modified,* 123 F.3d 693 (D.C. Cir. 1997).

[5] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Third Report and Order, CC Docket No. 96-128, FCC 99-7 (rel. Feb 4, 1999), *appeal pending sub nom. American Public Communications Council v. FCC,* No. 99-1144 (D.C. Cir.). Significantly, the Commission abandoned its previous claim that TOCIA bars a caller-pays approach. ITA emphasized in this remand proceeding that it "originally was a strong supporter of the carrier-pays methodology because it believed this would provide administrative and cost efficiencies, while minimizing payphone compensation rates. In fact, however, implementation of carrier-pays has proven to be confusing, costly and inefficient because of the lack of billing and collection arrangements and the failure of LECs to pass accurate ANI coding digits identifying payphone calls. . . . The Commission should [therefore] discard its 'carrier-pays' approach to payphone compensation in favor of a caller-pays method." ITA Comments, CC Docket No. 96-128, at 2 (July 13, 1998).

[6] ITA Comments at 3; TRA Comments at 1; Sprint Comments at 2; Cable & Wireless Comments at 2. *See* Qwest Comments at 3; MCI WorldCom Comments at 8.

the term 'CIC' is not even mentioned in that order."[7] Neither APCC nor the RBOC Coalition can refute this point. Thus, not only is the petition an unwarranted intrusion into settled PSP compensation rules, it is an invitation to commit judicially reversible procedural error. *National Planning and Reproductive Health Association v. Sullivan*, 979 F.2d 227, 231-35 (D.C. Cir. 1992), for instance, clearly holds that agencies can amend an established rule only through full notice-and-comment rulemaking. Sprint Comments at 3; *see* ITA Comments at 3-5.

As a policy matter, neither the RBOC Coalition nor APCC offers any basis for changing the rules other than general "confusion" in the payphone industry. RBOC Coalition Petition at 1 ("The Commission's effort to assign [the compensation] obligation based on whether the inter-exchange carrier is 'facilities-based' or owns or leases 'switching capability' has led to disagreements among PSPs and IXCs."); APCC Comments at 4 (present PSP compensation rules present "extremely burdensome tasks"). Yet confusion in the industry is a continuing phenomenon, having causes none the least of which is PSPs' and LECs' own failure to comply with the Commission's coding digit requirements. As ITA noted last year, payphone compensation "has proven to be confusing, costly and inefficient because of the lack of billing and collection arrangements and the failure of LECs to pass accurate ANI coding digits identifying payphone calls."[8]

If confusion were the touchstone, the Commission should long ago have abandoned the carrier-pays approach, recognizing that as a practical matter it has been an abysmal failure. The Commission should therefore not grant the instant petition on the basis of alleviating alleged confusion, as the present situation in payphone compensation is a direct result of the PSPs' and LECs' own refusal to create a functional payment clearinghouse system and the Commission's

[7] Sprint Comments at 2.

[8] ITA Comments, CC Docket No. 96-128, at 2 (July 13, 1998).

failure to establish rules that are workable in the real-world environment of today's rapidly changing telecommunications industry.

As a substantive matter, once again the overwhelming weight of the record — all but the two PSP association commenters — demonstrates that the proposed change in payphone compensation rules is simply infeasible.[9] Amending the rules to create an entirely new class of payor, those with a CIC, would impose significant administrative burdens on thousands of small resellers that, by any definition, simply do not have the resources to perform the call tracking and payment obligations inherent in the carrier-pays methodology. Such a change would also directly thwart the Commission's key policy rationale for the facilities-based carrier-pays approach: facilities-based carriers are best able to track and remit compensation for PSP calls. The Commission reasoned that "in the interests of administrative efficiency and lower costs, facilities-based carriers should pay the per-call compensation for the calls received by their reseller customers."[10] After three years, the Commission should not lightly abandon this overriding goal of creating an efficient, low-cost payphone compensation system , and certainly not on the basis of a lone, self-interested petition for clarification.

The time for balance and fairness in the Commission's payphone compensation rules is long past. The Commission cannot legitimately ignore the interests of IXCs, resellers and prepaid service providers, all of whom are ultimately responsible for conforming to the compensation regime, in an effort to assist PSPs in their collection efforts. If confusion is a problem, as ITA agrees, clarity cannot fairly be achieved by accepting flawed procedural and substantive

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[9] Qwest Comments at 3, 5; MCI WorldCom Comments at 5-6; TRA Comments at 5; Cable & Wireless Comments at 5; Frontier Communications Comments at 4, 6 n.12.

[10] *Payphone Order,* 11 FCC Rcd. at 20, 586; *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* Order on Reconsideration, 11 FCC Rcd. 21,233, 21,271 (1996).

arguments for a rule change and hiding that change in the guise of a mere "clarification." If the Commission feels that any large-scale change in the payphone compensation rules is necessary, it should conduct a comprehensive, formal notice-and-comment rulemaking.[11] Piecemeal adoption of rule changes serves neither the Commission's nor the industry's interests. Indeed, as the Commission is well aware, a great number of parties' livelihoods hang on the outcome of PSP compensation; given the accelerating entry into the market, this number has grown considerably since the time of the Commission's first 1996 payphone rulemaking. The Commission must give all of these parties the opportunity to present fully their views on the efficacy, if any, of revised PSP compensation rules.

CONCLUSION

For all these reasons, the Commission should dismiss the RBOC Coalition Petition and should issue a Further Notice of Proposed Rulemaking on any compensation issues for which it believes amendment of its rules may be warranted.

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[11] ITA Comments at 5. *See also* Cable & Wireless Comments at 3; TRA Comments at 6.

CERTIFICATE OF SERVICE

I, Stanley M. Bryant, do hereby certify that on this 1st day of June, 1999, that I have served a copy of the foregoing document via * messenger and U.S. Mail, postage pre-paid, to the following:

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